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# Commentary on Proposition 8: Much Ado About Nothing; or A Wake-Up Call to Do Something

## **Keywords**

California Constitution, Proposition 8, Lesbian, Gay, Bisexual, and Transgender community, LGBT community, African-American community

# COMMENTARY ON PROPOSITION 8: MUCH ADO ABOUT NOTHING OR A WAKE UP CALL TO DO SOMETHING

By  
Lydia Edwards, Esq.\*

On November 4, 2008, California voters passed Proposition 8 (“Prop 8”), amending the California Constitution to declare, “[o]nly marriage between a man and a woman is valid or recognized in California.”<sup>1</sup> On that same night Barack Obama was elected the first African-American President of the United States. The concurrence of these two events spurred emotionally charged accusations from the Lesbian, Gay, Bisexual, and Transgender (“LGBT”) community towards the African-American community. Also telling about the night of November 4, 2008 was the discourse about who was a victim and who was perpetrator of Prop 8. Much of the media reports and immediate reaction created a dichotomy of straight African-Americans discriminating against white gays and lesbians.

## BACKGROUND

In March 2000, California voters passed Proposition 22, declaring that only marriage between a man and a woman would be valid or recognized in California. On May 15, 2008, the California Supreme Court ruled in a 4–3 decision that the statute enacted by Proposition 22, and other similar statutes limiting the definition of marriage, violated the equal protection clause of the California Constitution.<sup>2</sup> The Court ultimately found that individuals of the same sex have the right to marry under the California Constitution and that same-sex marriage should therefore be valid and recognized in California.<sup>3</sup> In reaction to the Court’s decision, opponents to same-sex marriage put forward Proposition 8 to add the language of Proposition 22 to the California Constitution.

The campaign to pass Proposition 8 was largely led by two organizations: “Protect Marriage” and “Yes on Proposition 8.” Their arguments for the passage of Proposition 8 were threefold.<sup>4</sup> First, they argued that Prop 8 restored the definition of marriage to the same language Californians voted for in 2000.<sup>5</sup> Second, they stated that Prop 8 overturned the decision of the four California Supreme Court judges who acted undemocratically to ignore the will of the people and legislated from the bench to declare Prop 22 unconstitutional.<sup>6</sup> Finally, the two proponents argued that Prop 8 protects children from being taught in public schools that marriage between members of the same sex is the same as “traditional” heterosexual marriage.<sup>7</sup> They argued that Prop 8 would “prevent other consequences to Californians who will be forced to not just be tolerant of gay lifestyles, but face mandatory compliance regardless of their personal beliefs.”<sup>8</sup>

The campaign to defeat Proposition 8 was led by “No on Prop 8, Equality for All.” This group argued that by defining marriage as between a man and a woman, Prop 8 eliminated the

possibility of marriage for a targeted group and is, therefore, a violation of the civil rights of all Californians. They argued that because the California Supreme Court declared marriage a fundamental right, Prop 8 is a violation of state equal protection.

Finally, they argued that domestic partnerships and civil unions are not comparable to marriage because the doctrine of “separate but equal” is unconstitutional.

On election night, the Los Angeles Times (“L.A. Times”) reported that Proposition 8 passed with 52.2% of the vote.<sup>9</sup> On November 5, 2008, the L.A. Times, along with several major newspapers, cited an AP exit poll showing

that 70% of African-American voters supported Proposition 8.<sup>10</sup> Along with religious organizations such as the Mormon Church, African-Americans were seen as one of the key components to the measure’s passage.<sup>11</sup>

Reactions to the news that African-American voters had overwhelmingly supported Prop 8 were swift and emotional; eliciting pain, frustration, shock, and in some cases bigotry. Dan Savage, a gay columnist and civil rights activist, can summarize the frustration of many gay activists in this November 5 post:<sup>12</sup>

I’m done pretending that the handful of racist gay white men out there—and they’re out there, and I think they’re scum—are a bigger problem for African Americans, gay and straight, than the huge numbers of homophobic African Americans are for gay Americans, whatever their color.<sup>13</sup>

Blogs and news broadcasts throughout the country discussed the passage of Prop 8 in a dichotomous tone with African-Americans on one side and gay men and lesbians on the other. As seen in this comment from Jeff Jacoby, a white columnist for the Boston Globe:

If black voters overwhelmingly reject the claim that marriage amendments like Proposition 8 are nothing more than bigotry-fueled assaults on civil rights, perhaps it is because they know only too well what real bigotry looks like. Perhaps it is because they resent the assertion that adhering to the ageless meaning of marriage is tantamount to supporting the pervasive humiliation and cruelty of Jim Crow.<sup>14</sup>

Yet another example,

White gay media like to presume they are absolved from racism because they are steady

riding on the backs of the civil rights movement as if the victimization is of the same creed. As a black gay woman this is a conundrum that I live with daily, but in the end I agree with the larger black populace that is often resentful of how white gay America has hijacked the civil rights movement without any effort to create coalitions.<sup>15</sup>

As the fervor of election night died off, people went back to examine the actual statistics from the exit polls. Further analysis of the population of African-Americans in the state of California—6.2%—demonstrates that if 70% of African-Americans did vote for the passage of Prop 8, it would still be highly unlikely that they alone would account for the initiative's passage.<sup>16</sup> Later polls threw suspicion onto the high numbers recorded at the exit polls. Final analysis shows that the voting patterns of African-Americans mirrored those of other groups and broke down generationally.<sup>17</sup>

### HOW BLACKS BECAME STRAIGHT AND GAYS BECAME WHITE

People could debate for an eternity as to why voters in California decided to overturn their state supreme court and void thousands of marriages, but that is not this article's focus. Instead, we propose that the passage of Proposition 8 and the subsequent media description of the issue as “black v. gay” was a call to action; a call to truly analyze the way the United States discusses sexuality and race and to point out that people in both the LGBT and African-American communities are in part to blame for the “black v. gay” dichotomy.

This falsehood, based on stereotypes of African-Americans as wholly heterosexual and the LGBT community as mainly white and upper-middle class, has injured both movements' quest for equality and silenced the voices of many LGBT people of color. As Wanda Sykes states in *The Advocate*, “We're literally killing ourselves over this fear of homosexuality.”<sup>18</sup> To provide any guidance for better discourse it is necessary to understand how the discourse created the dichotomy that many observe today.

African-Americans have suffered extreme and often violent discrimination from the beginning of American history. One might expect a greater sense of empathy on the part of African-Americans for the struggle for gay rights, and indeed much of the initial surprise and hurt over the reported disproportionate percentage of African-American vote for Proposition 8 arose from a belief that there should have been a greater sense of empathy.

The relationship between African-Americans and the LGBT community is hard to characterize. Religion, family, experience, and education influence each person within a community. If one is going to generalize, however, that homophobia is prevalent in many black communities, this may stem in part from the lack of visibility of African-American LGBT people as leaders or prominent members of the community. That is not to say African-Americans are not as open about their sexuality as White Americans—it is more a critique of the historical

lack of African-American gay and lesbian leaders. Those civil rights activists and trailblazers who were gay were encouraged or required to stay in the closet and prioritize the struggle for race or gender equality. As scholars have noted, for many in the African-American community, homosexuality is not “black.”<sup>19</sup> Identification as gay or lesbian for many is viewed as representative of European society; being out as an African-American may be seen as race-negating.<sup>20</sup> Far too often, homosexuality is considered comical, disgusting, or a form of betrayal. Books like *On the Down Low*,<sup>21</sup> by J. L. King, continue to perpetuate the notion that homosexuality is a home-wrecking, AIDS-spreading virus that steals African-American men from their families. These stereotypes result in homosexual people of color being perceived as less black, encouraging a form of in-group passing.<sup>22</sup>

The role of religion should not be ignored for its contribution to the ostracism of gay men and lesbians of all colors from the African-American community. Religious leaders in large churches often preach about homosexuality as one of the worst sins against God.<sup>23</sup> This rhetoric spreads from the same pulpits that inspired the non-violent Civil Rights Movement. Donny McClerkin,<sup>24</sup> for example, is a very popular gospel singer and a self-proclaimed “ex-gay,” who has described homosexuality as “a curse against which he must do battle.”<sup>25</sup>

Bayard Rustin is an evocative example of how an African-American man is lauded for his commitment to civil rights, but encouraged to quiet his sexuality.<sup>26</sup> Rustin was one of the primary organizers of the 1963 March on Washington but was kept out of public roles in the Civil Rights Movement and forced to downplay his sexuality. Rustin was a leading advisor and speech writer for Dr. Martin Luther King,<sup>27</sup> helped to integrate non-violent direct action into the Civil Rights Movement, and was a powerbroker for organized labor, the American Democratic Party, and world affairs.<sup>28</sup>

“Few African-Americans engaged in as broad a protest agenda as did Rustin; even fewer enjoyed his breadth of influence in virtually every political sector of American life. Nevertheless, Rustin remained the quintessential outsider in black civil rights circles for much of his life due to his ‘deviant’ sexual identity.”<sup>29</sup>

Pauli Murray is another example of an African-American committed to causes of gender and racial equality, but conflicted about her sexuality, which she kept hidden from many people.<sup>30</sup> Murray was the co-founder of NOW (National Organization of Women),<sup>31</sup> and the first black attorney to publish in an academic law review. Among many writings on civil rights, Murray drafted the *States' Laws on Race and Color*, which Thurgood Marshall called the “Bible for civil rights lawyers.”<sup>32</sup> She is also credited with coming up with the Fourteenth Amendment legal theories used by Ruth Bader Ginsburg in the 1970s.<sup>33</sup> Least known, but one of her greatest contributions to the African-American community and American legal thought, was her conviction to attack the essence of the long held legal theory of “separate but equal.”<sup>34</sup> Yet, Murray never declared herself a lesbian. Between fighting for gender inclusion in the Civil Rights Movement and racial understanding in the Women's Rights Movement, Murray may have felt overwhelmed.

The African-American community's reluctance to celebrate diversity among its leaders and heroes helps to perpetuate

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*“We're literally killing  
ourselves over this fear of  
homosexuality.”*

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a heterosexual normalcy of the African-American experience. This refusal also allows negative stereotypes about gay men and lesbians to pervade unchecked. It is of no surprise, therefore, that the headlines following the passage of Proposition 8 talked about the African-American community as though it were wholly heterosexual. As Marlon T. Riggs stated in *Tongues Untied*: “In the great gay mecca, I was an invisible man, still I had no shadow, no substance, no history, no place, no reflection.”<sup>35</sup>

LGBT legal analysis evolves from parallel arguments advanced in gay and lesbian political activism.<sup>36</sup> Gay and lesbian Americans of all colors have suffered discrimination and ostracism from “mainstream” American ideals and legal equality. Still, conversations about racial inequality are largely absent from LGBT discourse unless when comparing gay and lesbian quest for equality with that of African-Americans. This comparison and discourse contribute to the “black v. gay” dichotomy. Along with other factors, this comparison has helped to create a “white-washed” portrayal of the incredibly diverse LGBT community and the false dichotomy following the passage of Proposition 8.

This “white-washing” may be a result of conscious efforts in some of the LGBT leadership to ignore issues of race and gender. Richard Mohr, noted gay rights activist, urged gay organizations not to build coalitions with other groups, including African-Americans and women, because it was a wasteful drain on the movement.<sup>37</sup> Others feel, in some respects, gays and lesbians are more discriminated against than African-Americans. Andrew Sullivan, gay conservative columnist, explained such when comparing slavery for heterosexual African-Americans and white gays and lesbians.

But even slaves, if they were heterosexual, were occasionally allowed the right to marry the person they loved. That right was often peremptorily taken away, but when it was, the hideousness of the injustice was clear. But that injustice is unavailable to homosexuals, because they haven’t even been deemed eligible for the institution of marriage in the first place; they have been, from one particular perspective, beneath slave. And they still are.<sup>38</sup>

Many people believe the prioritization of marriage equality for the LGBT movement is a result of the lack of diversity in LGBT leadership and the failure to listen to gay men and lesbians of color. As Paula Ettelbrick explains: “[T]hose closer to the norm or to power in the country are more likely to see marriage as a principle of freedom and equality. Those who are acceptable to the mainstream because of race, gender and economic status are more likely to want the right to marry. It is the final acceptance, the ultimate affirmation of identity.”<sup>39</sup>

The LGBT movement historically and presently seems to have prioritized becoming part of the American “mainstream.” People of color often meet comparison arguments, such as Andrew Sullivan’s above, with disdain. For many, the “use of racial analogies is suspect, coming as it does from a movement

deeply splintered over the relevance of racism to the fight against homophobia.”<sup>40</sup> For others it seems to trivialize the experience of people of color in the United States. For still others, there is a sense of disgust and abhorrence for any likening of African-Americans to gays and lesbians. As explained by Colin Powell, “homosexuality is not a benign . . . characteristic such as skin color . . . . It goes to one of the most fundamental aspects of human behavior.”<sup>41</sup>

Like most civil rights movements, the LGBT movement uses the faces of average Americans to engender empathy. The face of the LGBT movement has been overwhelmingly portrayed as white and middle class. As Devon W. Carbado explains, the movement seems to use “but for” gay people.<sup>42</sup> These are people “who, but for their sexual orientation, [are] perfectly mainstream.”<sup>43</sup> The use of the “but for” gay people seems like a missed opportunity to be inclusive and obscures history.

### PERRY WATKINS: A CASE STUDY IN WHITE-WASHING

A perfect example of the failure of the LGBT movement to be racially inclusive is the case of Sergeant Perry Watkins. Watkins was nineteen years old when he was drafted into the military.<sup>44</sup> At the time he was drafted he acknowledged he was gay. Watkins again acknowledged his homosexuality in an affidavit after being subject to a criminal investigation. Watkins explained, “he had been a homosexual from the age of thirteen and that, since his enlistment, he had engaged in sodomy with two other servicemen.” The army ended the investigation due to “insufficient evidence.”<sup>45</sup>

Watkins performed in drag at official and unofficial military gatherings that were heavily attended.<sup>46</sup> So it came as a surprise when in 1982, Watkins was separated from the Army for being a homosexual. In all Watkins served 14 years in the Army and became in the words of his commanding officer, “one of our most respected and trusted soldiers.”<sup>47</sup> Watkins fought back to be reinstated in the Army and *he won*. To this day, Watkins is the first openly gay serviceman to successfully challenge the military’s antigay policy.

Despite Watkins’ significant civil rights milestone for the LGBT movement, he is virtually unknown. Instead of using Watkins as the face of the fight against the military ban on gay men and lesbians, the LGBT leadership chose to focus their campaigns on white soldiers such as Keith Meinhold, Joseph Steffan and Margarethe Cammermeyer. Commenting on how the LGBT community promoted Cammermeyer, Watkins remarked “we’ll go with a [white] woman who lied for twenty years before we go with a black man who had to live the struggle nearly every day of his life.”<sup>48</sup>

For Watkins’ case, along with the cases of many others, race helps explain the lack of attention gay rights proponents paid to him and to his story.<sup>49</sup> Tom Stoddard, the lawyer who directed the Campaign for Military Service, commented that there was a public relations problem with Watkins because he wore a nose ring and had a counter culture image, not because Watkins was



black.<sup>50</sup> This seems unlikely considering the PR problem with Watkins could have been solved by taking out his nose ring and putting him in a suit. More likely than not, Watkins' case was more complicated than the "but for" gays the movement chose to promote.<sup>51</sup> Watkins' story would have required a discussion of race, complicating the LGBT movement's strategy for fighting the military ban.<sup>52</sup>

When Watkins died of AIDS at the age of 47, he still felt a sense of betrayal by the national gay leaders who chose to promote white soldiers over himself. "It's blatant racism," said Watkins, when the same LGBT activists disinvited him from testifying at 1993 Congressional hearings on the ban, even though he was the only openly gay service person to go to the top of the court system and emerge victorious.<sup>53</sup>

## SO WHERE DO WE GO FROM HERE

An attempt to solve this discourse dilemma in one article is impossible. However, by continuing the conversation about how we talk about race and sexuality in the United States, we hope to answer the call to action prompted by the passage of Prop

8. We suggest to both groups to make conscious efforts to support one another in their common goal. We also suggest that each group individually assess its message and visible representation to ensure an inclusive discourse.

A common expression of discrimination faced by the African-American and LGBT community alike is police brutality. It would be a positive step to see and hear from more LGBT organizations on issues of police violence and racial profiling of people of color. In addition, organizations that deal with race relations with the police should dedicate some of their message to

the harassment that gay men and lesbians face.

We suggest that organizations dedicated to racial equality make sure to be consistent in their message for equality for all Americans and support the LGBT community in its fight for equality. More importantly, we suggest that these organizations diversify their leadership and ensure that their leaders and role models are no less celebrated because they are gay or lesbian. Similarly, gay and lesbian organizations need to diversify their leadership to include more people of color. When presenting the face of the LGBT movement to engender empathy, LGBT organizations should make a conscious effort to include racial diversity.

... "we'll go with a [white] woman who lied for twenty years before we go with a black man who had to live the struggle nearly every day of his life."

## ENDNOTES

\* Lydia Edwards Esq., Founding Editor-in-Chief of *The Modern American*, JD American University, Washington College of Law 2006, wishes to give a special thanks to Julio Capo Jr. Doctoral Candidate of Florida International University for his insight and guidance.

<sup>1</sup> CALIFORNIA SECRETARY OF STATE, VOTER INFORMATION GUIDE 128 (2008), available at <http://www.voterguide.sos.ca.gov/text-proposed-laws/text-of-proposed-laws.pdf>.

<sup>2</sup> Maura Dolan, *California Supreme Court Overturns Gay Marriage Ban*, L.A. TIMES, May 16, 2008, available at <http://www.latimes.com/news/local/la-megaymarriage16-2008may16,0,6182317.story>; League of Women Voters of California Education Fund, Proposition 8: Eliminates Right of Same-Sex Couples to Marry, <http://www.smartvoter.org/2008/11/04/ca/state/prop/8/> (last visited March 1, 2009).

<sup>3</sup> *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008).

<sup>4</sup> Protect Marriage, About Prop. 8, <http://www.protectmarriage.com/about> (last visited March 1, 2009).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Proposition 8, County-by-County Map, L.A. TIMES, available at <http://www.latimes.com/news/local/politics/cal/la-2008election-california-results,0,1293859.htmlstory?view=8&tab=0&fnum=0>.

<sup>10</sup> Shelly Grad, *70% of African Americans Backed Proposition 8, Exit Poll Finds*, L.A. TIMES, Nov. 5, 2008, available at <http://latimesblogs.latimes.com/lanow/2008/11/70-of-african-a.html>; see also CNN Election Center 2008, Local Exit Poll, <http://www.cnn.com/ELECTION/2008/results/polls/#CAI01p1>.

<sup>11</sup> See Grad, *supra* note 10 ("California's black and Latino voters, who turned out in droves for Barack Obama, also provided key support in favor of the state's same-sex marriage ban. Seven in 10 black voters backed a successful ballot measure to overturn the California Supreme Court's May decision allowing same-sex marriage, according to exit polls for The Associated Press. More than

half of Latino voters supported Proposition 8, while whites were split. Religious groups led the tightly organized campaign for the measure, and religious voters were decisive in getting it passed. Of the seven in 10 voters who described themselves as Christian, two-thirds backed the initiative. Married voters and voters with children strongly supported Proposition 8. Unmarried voters were heavily opposed.").

<sup>12</sup> The post has been taken down from his website.

<sup>13</sup> Dan Savage, *Black Homophobia*, THE STRANGER, Nov. 5, 2008, available at [http://74.125.45.104/search?hl=en&q=cache%3Aslog.thestranger.com%2F2008%2F11%2Fblack\\_homophobia&btnG=Google+Search&aq=f&oq=](http://74.125.45.104/search?hl=en&q=cache%3Aslog.thestranger.com%2F2008%2F11%2Fblack_homophobia&btnG=Google+Search&aq=f&oq=).

<sup>14</sup> Jeff Jacoby, *Playing the Race Card on Gay Marriage*, BOSTON GLOBE, Nov. 12, 2008, available at [http://www.boston.com/news/specials/gay\\_marriage/articles/2008/11/11/playing\\_the\\_race\\_card\\_on\\_gay\\_marriage/](http://www.boston.com/news/specials/gay_marriage/articles/2008/11/11/playing_the_race_card_on_gay_marriage/).

<sup>15</sup> Some Thoughts: When White Gays Show their True Rainbow, <http://suckaforlife.com/upodcast/tag/dan-savage/> (last visited March 1, 2009).

<sup>16</sup> See Shannika, *Facts Belie the Scapegoating of Black People for Proposition 8*, Nov. 7, 2008, available at <http://www.dailykos.com/story/2008/11/7/34645/1235/704/656272>.

<sup>17</sup> See, e.g., Ta-Nehisi Coates, *African Americans, Prop 8, and the Beguiling Art of Polling*, THE ATLANTIC, Jan. 12, 2009, available at [http://ta-nehisicoates.theatlantic.com/archives/2009/01/africanamericans\\_prop\\_8\\_and\\_the\\_beguiling\\_art\\_of\\_polling.php](http://ta-nehisicoates.theatlantic.com/archives/2009/01/africanamericans_prop_8_and_the_beguiling_art_of_polling.php).

<sup>18</sup> Ari Karpel, *Black and Gay Like Me*, THE ADVOCATE, March 2009, Issue 1024, available at [http://www.advocate.com/issue\\_story\\_ektid71760.asp](http://www.advocate.com/issue_story_ektid71760.asp).

<sup>19</sup> Devon W. Carbado, *Black Rights, Gay Rights, Civil Rights*, 47 UCLA L. REV. 1457, 1473-1514 (2000) [hereinafter Carbado, *Rights*].

<sup>20</sup> Angelo Onwuachi-Willig, *Undercover Other*, 94 CAL. L. REV. 873, 892-893 (2006).

<sup>21</sup> J.L. KING, ON THE DOWN LOW: A JOURNEY INTO THE LIVES OF 'STRAIGHT' BLACK MEN WHO SLEEP WITH MEN (Harlem Moon 2005).

<sup>22</sup> Onwuachi-Willig, *supra* note 20, at 892.

## ENDNOTES CONTINUED

<sup>23</sup> See, e.g., Tom Standifer, *Religious Leaders Clash on Validity of Gay Marriage*, DAILY NEXUS, May 29, 2008, available at <http://www.dailynexus.com/article.php?a=16990> (explaining that religious leaders in California hold different opinions on gay marriage based on whether or not it clashes with religion); Joseph Berger, *New York Church Leaders Divided Over Homosexual-Rights Measures*, N.Y. TIMES, Feb. 9, 1986 (describing the conflict between religious leaders in accepting homosexuality and protecting people from discrimination based on their sexual orientation).

<sup>24</sup> See Richard Leiby, *Donnie McClurkin, Ready to Sing Out Against Gay 'Curse'*, WASHINGTON POST, Aug. 29, 2004, at D03, available at <http://www.washingtonpost.com/wp-dyn/articles/A42982-2004Aug28.html>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 893.

<sup>27</sup> Victor C. Romero, *Rethinking Minority Coalition Building: Valuing Self-Sacrifice, Stewardship and Anti-Subordination*, 50 VILL. L. REV. 823, 824 (2005).

<sup>28</sup> Devon W. Carbado & Donald Weise, *The Civil Rights Identity of Bayard Rustin*, 82 TEX. L. REV. 1133, 1133-1134 (2004).

<sup>29</sup> *Id.* at 1135.

<sup>30</sup> Pauli Murray never declared herself to be gay. However, based on personal writings and supposed relationships with women Pauli Murray was more than likely by today's standards a lesbian. For an in depth discourse on the complicated relationship Murray had with her sexuality one should read, Doreen Marie Drury, *Experimentation on the Male Side: Race Class Gender and Sexuality in Pauli Murray Quest for Love and Identity, 1910-1960* (Dec. 2000) (unpublished Ph.D. dissertation, Boston College) available at <http://escholarship.bc.edu/dissertations/AAI3008606/>.

<sup>31</sup> National Organization for Women, *Honoring Our Founders*, <http://www.now.org/history/founders.html> (last visited March 1, 2009).

<sup>32</sup> Answers.com, *Pauli Murray: Biography*, <http://www.answers.com/topic/pauli-murray> (last visited March 1, 2009).

<sup>33</sup> National Organization for Women, *Honoring Our Founders*, <http://www.now.org/history/founders.html> (last visited March 1, 2009).

<sup>34</sup> See Marris Lackey, Pauli Murray, (2004) available at <http://womenslegal.history.stanford.edu/papers04/MurrayP-Lackey04.pdf> (last visited March 1, 2009).

<sup>35</sup> Marlon T. Riggs, *Tongues Untied*, in *BROTHER TO BROTHER: NEW WRITINGS BY BLACK GAY MEN* 203 (Essex Hemphill ed., 2007).

<sup>36</sup> Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561, 619 (1997).

<sup>37</sup> *Id.* at 620.

<sup>38</sup> *Id.* at 631.

<sup>39</sup> *Id.* at 591.

<sup>40</sup> Hutchinson, *supra* note 36, at 630.

<sup>41</sup> *Id.* at 628.

<sup>42</sup> Carbado, *Rights*, *supra* note 19, at 1506.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 1508; see *Watkins v. United States Army*, 875 F.2d 699, 701 (9th Cir. 1989).

<sup>45</sup> *Watkins*, 875 F.2d at 701-702.

<sup>46</sup> Carbado, *Rights*, *supra* note 19, at 1506.

<sup>47</sup> See *Watkins*, 875 F.2d at 699.

<sup>48</sup> Gowri Ramachandran, *Intersectionality as Catch 22: Why Identity Performance Demands Are Harmless Nor Reasonable*, 69 ALB. L. REV. 299, 332 (2005).

<sup>49</sup> *Watkins*, 875 F.2d at 699.

<sup>50</sup> Ramachandran, *supra* note 48, at 332.

<sup>51</sup> Carbado, *Rights*, *supra* note 19, at 1513.

<sup>52</sup> *Id.*

<sup>53</sup> Su Docekal, *Perry Watkins: A Soldier Whose Weapon Was the Truth*, FREEDOM SOCIALIST, (July-Sept. 1996), available at <http://www.socialism.com/fsarticles/vol17no2/watkins.html>.

## PRINTING INFORMATION

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